



PRICE DANIEL  
ATTORNEY GENERAL

**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

December 3, 1949

*Compliments*  
*44-1056*

Hon. Jack C. Altaras  
County Attorney  
Johnson County  
Cleburne, Texas

Opinion No. V-954.

Re: The applicability of  
compulsory school at-  
tendance laws to chil-  
dren who are seventeen  
and have not completed  
the ninth grade.

Dear Sir:

We refer to your inquiry from which we quote,  
in substance, as follows:

"Article 2892, V.C.S. and Article 297,  
V.P.C., require every child in the State who  
is 7 years and not more than 16 years of age  
to attend public schools in the district of  
his residence for not less than 120 days an-  
nually. Article 2893, subd. 5, V.C.S., and  
Article 298, subd. (e), V.P.C., exempts a  
child from school attendance who is more  
than 16 years of age who has satisfactorily  
completed the work of the ninth grade and  
whose services are needed for the support  
of a parent, et cetera.

"The question here presented is whether  
or not a child who is 17 years (or any age  
over 16 years) and who has not satisfactorily  
completed the work of the ninth grade is sub-  
ject to compulsory school attendance."

The civil law, Article 2892, and the correspond-  
ing penal law, Article 297, read as follows:

"Every child in the State who is seven  
years and not more than sixteen years of age  
shall be required to attend the public schools  
in the district of its residence, or in some  
other district to which it may be transferred  
as provided by law, for a period of not less  
than one hundred and twenty days. The period  
of compulsory school attendance at each school  
shall begin at the opening of the school term

unless otherwise authorized by the district school trustees and notice given by the trustees prior to the beginning of such school term; provided that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides."

The civil statute, subdivision 5 of Article 2893, and the corresponding penal law, Article 295, subdivision (e), as amended by House Bill No.630, Acts 49th Legislature, 1945, read as follows:

"The following classes of children are exempt from the requirement of this law:

". . . .

"(e) Any child more than sixteen (16) years of age who has satisfactorily completed the work of the ninth grade, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evidence to the county superintendent, be exempted from further attendance at school."

It is an elementary rule of construction that a statute which is part of an existing scheme of legislation upon a given subject must be so construed as to bring it in harmony with all other provisions, if the language of such statute is fairly susceptible of such interpretation. Bishop v. Houston I.S.D., 119 Tex.403, 29 S.W.2d 312 (1930). It is pertinent also to note that Articles 2892 through 2898 of the Civil Statutes and Articles 297 through 300 of the Penal Statutes, prior to their codification in Revised Statutes of 1925, each had their origin in the compulsory education law of 1915. H.B.402, Acts 34th Leg., 1915, pp. 92 to 98.

Back in 1917 when the law, which is now codified as Article 2892, V.C.S., provided that every child of eight years and not more than fourteen years old should be required to attend public school, et cetera, it was held that a child who attained the age of fourteen years before the beginning of the public free schools in his district was not subject to the provisions of that compulsory attendance law. Butler v. State, 81 Tex.Crim.167, 194 S.W. 166 (1917). The Act

of 1935 (S.B.49, 44th Leg., p.409) substituted "seven years" for "eight years" and "sixteen years" for "fourteen years." Applying that decision to Article 2892, V.C.S., as amended in 1935, it would follow that a child who attains the age of sixteen years before the beginning of the public schools in his district is not subject to the provisions of the compulsory attendance law.

When is a child "not more than sixteen years of age?" We quote from Gibson v. People, 44 Colo.600, 99 Pac.333:

"In one sense a child is sixteen years of age until it is seventeen; so also it is sixteen when it is eighteen; but, in the true sense, it is sixteen and over whenever it has passed beyond the first day of the sixteenth anniversary of its birth. Had it been the intention to include children up to the time they reach their seventeenth birthday, the General Assembly would naturally have said 'children under seventeen years of age' . . . A child is sixteen years of age on the sixteenth anniversary of his birth, and thereafter is over sixteen years of age . . ."

See also Munger v. State, 57 Tex.Crim.384, 122 S.W.875 (1909).

At first blush, subsection 5 of Article 2893 exempting from compulsory attendance "any child more than sixteen (16) years of age who has . . . completed . . . ninth grade, and whose services are needed in support of a parent, et cetera," appears to conflict with Article 2892 and also to amount to an exemption from a condition which does not exist.

However, a close examination of Article 2892, and in the light of the decision in Butler v. State, supra, will reveal that it provides that where a child has not attained the age of sixteen years before the beginning of the public schools in his district, he is subject to the provisions of that compulsory attendance law, and "shall be required to attend . . . public schools . . . for a period of not less than one hundred and twenty days . . . provided . . . no child shall be required to attend school for a longer period than the maximum term of the

public school . . ." It does not for example, authorize or permit a child attaining the age of sixteen years any time after the beginning of the public school in his district to elect within that current school year not to go to school. Such a child must attend school for the time required or authorized by Article 2892, unless he comes within one of the exemptions in Article 2893.

Under subdivision 5 of Article 2893, quoted hereinabove, such a child who has attained the age of sixteen during the school year, who has completed the work of the ninth grade, and whose services are needed in support of a parent or other person standing in parental relation to him, may, in accordance with the provisions thereof, be exempted from the provisions of Article 2892. As thus construed subdivision 5 of Article 2893, V.C.S., and subdivision (e) of Article 298, V.P.C., has application and meaning. It will not be presumed that the Legislature enacted a meaningless or useless law.

Accordingly, it is our opinion that a child who attains the age of sixteen or over before the beginning of the public free schools in his district is not subject to the provisions of the compulsory attendance laws, whether or not he has completed the work of the ninth grade. But a child who attains the age of sixteen after the beginning of the public free schools in his district is subject to the provisions of the compulsory attendance law for that school period, unless he has been exempted from its provisions in accordance with Article 2893, subdivision 5, V. C. S.

For purposes of this opinion we have assumed that the exemptions found in subdivisions 1 through 4 of Article 2893 are not involved in the submitted question.

#### SUMMARY

A child who attains the age of sixteen or over before the beginning of the public free schools in his district is not subject to the provisions of the compulsory attendance law, whether or not he has completed the work of the ninth grade. Art.2892, et seq., V.C.S., Art.297, et seq., V.P.C.; Butler v. State, 81 Tex.Crim.167, 194 S.W. 166. But a child who attains the age of

Hon. Jack C. Altaras, page 5 (V-954)

sixteen after the beginning of the public free schools in his district is subject to the provisions of the compulsory attendance law for that school year, unless he has been exempted from its provisions in accordance with Article 2893, subdivision 5, V.C.S.

Yours very truly,

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